

## Message Text

UNCLASSIFIED

PAGE 01 MANILA 01772 01 OF 02 020618Z

ACTION EA-12

INFO OCT-01 ISO-00 L-03 COME-00 EB-08 LOC-01 OPIC-06  
/031 W

-----130882 020920Z /20

R 020512Z FEB 78

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 1165

UNCLAS SECTION 1 OF 2 MANILA 1772

DEPARTMENT ATTENTION: EB/IFD/BP - MR. HARVEY WINTER

E.O. 11652: N/A

TAGS: EINV, EIND, RP

SUBJECT: NEW PATENT LAW REVISION

REF: A. MANILA 1549, B. MANILA 1239, C. MANILA 1095

1. THE FOLLOWING ARTICLE APPEARED IN BUSINESS ASIA,  
JANUARY 20 1978 AND IS REPEATED IN ITS ENTIRETY FOR INFORM-  
ATION OF DEPARTMENT AND SPECIFICALLY EB/IFD/BP. IT MAY BE  
OF USE IN FORMULATING GUIDANCE REQUESTED IN REFTELS.

2. BEGIN QUOTE: FIRMS FACE PROBLEMS WITH AMENDMENTS TO  
PHILIPPINE PATENT LAW

RECENT AMENDMENTS TO THE PHILIPPINES' PATENT LAW,  
REDUCING PATENT PROTECTION CONSIDERABLY, POSE SERIOUS  
PROBLEMS FOR INTERNATIONAL COMPANIES OPERATING IN THE  
COUNTRY. PHARMACEUTICAL FIRMS - SINCE THEY ARE MOST  
AFFECTED BY THE CHANGES - INTEND LODGING AN APPEAL, HOWEVER,  
AND ARE CONFIDENT THAT ONEROUS PROVISIONS IN THE AMENDMENTS  
WILL BE MODIFIED.

THE AMENDMENTS, CONTAINED IN A PRESIDENTIAL  
DECREE SIGNED IN MID-DECEMBER, INCLUDE THE FOLLOWING:  
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 MANILA 01772 01 OF 02 020618Z

- ROYALTIES MAY NOT EXCEED 5 PERCENT OF THE NET  
WHOLESALE PRICE OF EACH PRODUCT MANUFACTURED UNDER A  
LICENSING AGREEMENT. ALTHOUGH CENTRAL BANK CIRCULAR 393  
ALREADY LIMITS ROYALTIES TO THIS AMOUNT, COMPLIANCE IS  
NECESSARY ONLY WHEN FULL REMITTABILITY OF ROYALTIES  
ABROAD IS REQUESTED. MOREOVER, UNDER THE CURRENT RULES,

EXCEPTIONS ARE POSSIBLE. A LICENSER CAN REQUEST A HIGHER RATE FROM THE BOARD OF INVESTMENTS OR CENTRAL BANK IF THIS IS JUSTIFIED BY THE TYPE AND COST OF THE TECHNOLOGY. THE NEW RULES ARE LESS FLEXIBLE. FURTHERMORE, THE GOVERNMENT MAY SEEK REDUCTIONS IN ROYALTY RATES FOR LICENSED PRODUCTS THAT ARE NO LONGER NEW, OR WHERE THE TECHNOLOGY IS AVAILABLE LOCALLY.

- THE WAITING PERIOD FOR COMPULSORY LICENSING WILL BE ONLY TWO YEARS (REDUCED FROM THE THREE YEARS CALLED FOR BY THE PARIS CONVENTION). THUS, SHOULD A PATENT HOLDER FAIL TO WORK THE PATENT WITHIN TWO YEARS OF REGISTRATION WITH THE PHILIPPINE PATENT OFFICE, ANOTHER QUALIFIED PARTY COULD OBTAIN A LICENSE TO EMPLOY THE PATENTED TECHNOLOGY.

- COMPULSORY LICENSING MAY BE GRANTED TO CERTAIN PATENTED PRODUCTS OR PROCESSES THAT ARE DEEMED TO BE OF VITAL IMPORTANCE TO THE COUNTRY'S DEFENSE, ECONOMY, OR PUBLIC HEALTH BEFORE THE EXPIRATION OF THE TWO-YEAR PERIOD MENTIONED ABOVE.

-COMPULSORY LICENSING WILL BE GRANTED ON THE BASIS OF INTERDEPENDENCE OF PATENTS. IF ANY INVENTION PROTECTED BY A PATENT CANNOT BE WORKED WITHOUT INFRINGING RIGHTS DERIVED FROM A PATENT GRANTED ON A PRIOR APPLICATION  
UNCLASSIFIED

UNCLASSIFIED

PAGE 03 MANILA 01772 01 OF 02 020618Z

OR BENEFITING FROM EARLIER PRIORITY, THEN COMPULSORY LICENSING MAY BE GRANTED ON APPLICATION. IN THIS CASE, THE ONLY REQUIREMENT WOULD BE THAT THE INVENTION SERVES INDUSTRIAL PURPOSES DIFFERENT FROM THOSE OF THE EARLIER PATENT OR CONSTITUTES NOTEWORTHY TECHNICAL PROGRESS IN RELATION TO THE EARLIER PATENT.

- THE DIRECTOR OF PATENTS WILL GRANT OR REJECT A LICENSE APPLICATION WITHIN 180 DAYS OF THE DATE THE PETITION IS FILED. SINCE UNDER THE ORIGINAL LAW, NO TIME LIMIT WAS SET, IT WAS POSSIBLE TO DELAY THE PROCEEDINGS FOR A NUMBER OF YEARS.

- A FIRM WORKING A PATENTED PRODUCT UNDER LICENSE IS EXEMPT FROM ANY LIABILITY OTHER THAN ROYALTY PAYMENTS. FOR EXAMPLE, CONTRACT PROVISIONS WOULD BE NULL AND VOID IF THEY FORBODE EXPORTS OR REQUIRED SINGLE-SOURCE PURCHASE OF MACHINERY, MATERIALS, OR ADDITIONAL TECHNOLOGY. DRUG COMPANIES ARE PARTICULARLY CONCERNED ABOUT THIS PROVISION, SINCE THEY WANT TO GUARANTEE THE QUALITY OF PROPRIETARY MATERIALS USED IN PRODUCTS THAT

UNCLASSIFIED

NNN

UNCLASSIFIED

PAGE 01 MANILA 01772 02 OF 02 020914Z  
ACTION EA-12

INFO OCT-01 EB-08 ISO-00 L-03 COME-00 LOC-01 OPIC-06  
/031 W

-----001563 020919Z /10

R 020512Z FEB 78  
FM AMEMBASSY MANILA  
TO SECSTATE WASHDC 1166

UNCLAS SECTION 2 OF 2 MANILA 1772

DEPARTMENT ATTENTION: EB/IFD/BP - MR. HARVEY WINTER

BEAR THEIR TRADEMARKS. A GOVERNMENT OFFICIAL POINTED OUT  
THAT AN EXPORT BAN WILL BE PERMISSIBLE IF IT IS REQUIRED  
BY LAW IN THE LICENSER'S HOME COUNTRY.

REVISION UNLIKELY

ALTHOUGH THE DRUG INDUSTRY FEELS IT CAN SOFTEN  
THE IMPACT OF THE AMENDMENTS, HOW EFFECTIVE ITS APPEAL  
WILL BE IS UNCERTAIN. THE FIRST PROBLEM IT FACES IS THAT  
THE AMENDMENTS ARE NOW LAW. HEARINGS ON THE AMENDMENTS  
IN LATE 1976 AND EARLY 1977 DEMONSTRATED BOTH THE EXTENT  
OF NATIONALISM THAT CAN BE MUSTERED AGAINST INTERNATIONAL  
DRUG FIRMS AND THE GOVERNMENT'S WILLINGNESS QUIETLY TO  
LET THE AMENDMENTS GO BACK ON THE SHELF ONCE THE FUROR  
HAS DIED DOWN. WITH THE AMENDMENTS LAW, HOWEVER,  
PRESIDENT MARCOS MAY BE UNABLE TO MAKE THEM QUIETLY  
DISAPPEAR.

THE SECOND STUBBLING BLOCK IS MORE OBSCURE.  
THE UNUSUAL CIRCUMSTANCES SURROUNDING THE AMENDMENTS  
SIGNING SUGGEST FACTORS THAT LED THE PRESIDENT TO SIGN  
THE AMENDMENTS IN THE FIRST PLACE MAY PREVENT HIM FROM  
MODIFYING THEM TO ANY SIGNIFICANT EXTENT.

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 MANILA 01772 02 OF 02 020914Z

SOURCES IN MANILA SAY THAT PRESIDENT MARCOS  
SIGNED THE DECREE "BY ACCIDENT" - THAT IT WAS INCLUDED  
AMONG PAPERS SUBMITTED FOR HIS SIGNATURE WHEN HE WAS  
PREOCCUPIED WITH LAST MONTH'S REFEENDUM, AND THAT THERE  
WAS "NO OPPORTUNITY FOR HIM TO ENQUIRE INTO THE POSSIBLE  
REPERCUSSIONS ON PROSPECTIVE INVESTORS." IN ADDITION,  
THE DECREE WAS SIGNED IN MID-DECEMBER BUT BROUGHT TO NO  
ONE'S ATTENTION UNTIL THIS WEEK, AGAIN SUGGESTING THERE  
IS MORE TO THE AMENDMENTS THAN MEETS THE EYE. END QUOTE.  
NEWSOM

UNCLASSIFIED

NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 jan 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** PATENT LAW  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 02 feb 1978  
**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
**Disposition Action:** n/a  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:**  
**Disposition Date:** 01 jan 1960  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1978MANILA01772  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Expiration:**  
**Film Number:** D780049-1009  
**Format:** TEL  
**From:** MANILA  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1978/newtext/t197802101/aaaadhqz.tel  
**Line Count:** 180  
**Litigation Code IDs:**  
**Litigation Codes:**  
**Litigation History:**  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Message ID:** 28d0cdcc-c288-dd11-92da-001cc4696bcc  
**Office:** ACTION EA  
**Original Classification:** UNCLASSIFIED  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 4  
**Previous Channel Indicators:** n/a  
**Previous Classification:** n/a  
**Previous Handling Restrictions:** n/a  
**Reference:** 78 MANILA 1549, 78 MANILA 1239, 78 MANILA 1095  
**Retention:** 0  
**Review Action:** RELEASED, APPROVED  
**Review Content Flags:**  
**Review Date:** 28 feb 2005  
**Review Event:**  
**Review Exemptions:** n/a  
**Review Media Identifier:**  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**SAS ID:** 3431281  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** NEW PATENT LAW REVISION  
**TAGS:** EINV, EIND, RP  
**To:** STATE  
**Type:** TE  
**vdkgvwkey:** odhc://SAS/SAS.dbo.SAS\_Docs/28d0cdcc-c288-dd11-92da-001cc4696bcc  
**Review Markings:**  
Sheryl P. Walter  
Declassified/Released  
US Department of State  
EO Systematic Review  
20 Mar 2014  
**Markings:** Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014